

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of ROSARIO JUANA WILLIAMS,  
Minor.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

ERSKINE ANTOINE WILLIAMS,

Respondent-Appellant.

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UNPUBLISHED

May 20, 2010

No. 293893

Macomb Circuit Court

Family Division

LC No. 2008-000046-NA

Before: SAAD, P.J., and HOEKSTRA and SERVITTO, JJ.

PER CURIAM.

Respondent appeals as of right the order terminating his parental rights to the minor child under MCL 712A.19b(3)(c)(i). We affirm.

Respondent first argues that because he was not personally served with notice of the August 14, 2009 termination hearing, the trial court's order terminating his parental rights is void. We disagree. We review de novo the interpretation of statutes and court rules. *Pontiac Food Ctr v Dep't of Community Health*, 282 Mich App 331, 335; 766 NW2d 42 (2008).

Pursuant to MCL 712A.12, a parent not having custody of a child shall be personally served with notice of the termination petition and the time and place for hearing, *In re Terry*, 240 Mich App 14, 21; 610 NW2d 563 (2000); *In re Brown*, 149 Mich App 529, 541; 386 NW2d 577 (1986), unless the court finds personal service impracticable, MCL 712A.13. Failure to provide the notice required by statute constitutes a jurisdictional defect that renders the proceedings void. *Terry*, 240 Mich App at 21.

The termination hearing was scheduled for July 9, 2009. Respondent does not dispute that he received proper notice for the hearing. The hearing was subsequently adjourned to August 14, 2009, and defendant was not personally served with notice of the adjournment. Notice was mailed to respondent at the Buckingham Street address that respondent had previously given to the trial court. The personal service requirement does not apply to a notice for an adjournment of the termination hearing. MCR 3.920(F); *In re BAD*, 264 Mich App 66, 70 n 2; 690 NW2d 287 (2004); *In re Atkins*, 237 Mich App 249, 251; 602 NW2d 594 (1999); *In re*

*Andeson*, 155 Mich App 615, 618-619; 400 NW2d 330 (1986).<sup>1</sup> Accordingly, the trial court's order terminating respondent's parental rights is not void for lack of jurisdiction.

Respondent also argues that because he was not offered services to comply with the parent-agency agreement, the trial court erred in terminating his parental rights. We disagree.

The petitioner must establish at least one statutory ground for termination of parental rights by clear and convincing evidence. *In re JK*, 468 Mich 202, 210; 661 NW2d 216 (2003). We review for clear error the trial court's decision that a ground for termination exists and, where applicable, the court's determination regarding the child's best interests. *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009).

The trial court did not clearly err when it held that respondent failed to rectify the conditions leading to adjudication—criminality, lack of housing, and inability to provide care—and was unlikely to within a reasonable time, MCL 712A.19b(3)(c)(i). Petitioner generally must make reasonable efforts to rectify the problems in the home through a service plan, *In re Fried*, 266 Mich App 535, 542; 702 NW2d 192 (2005), and failure to make reasonable efforts can affect whether there was sufficient evidence to terminate parental rights, *In re Newman*, 189 Mich App 61, 67-68, 70; 472 NW2d 38 (1991). However, petitioner was not required to provide services while respondent was incarcerated in a jail that did not offer the services. Nonetheless, incarceration is not a justifiable excuse for failure to rectify issues of criminality and instability. There was evidence that after respondent was released from incarceration he was facing criminal charges for an attempted robbery, sleeping in different vehicles, and using drugs.

In addition, the trial court did not clearly err when it held that termination was in the child's best interests. MCL 712A.19b(5). There was no evidence that the child was attached to respondent or that termination was otherwise against her best interests.

Affirmed.

/s/ Henry William Saad

/s/ Joel P. Hoekstra

/s/ Deborah A. Servitto

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<sup>1</sup> We note that, had respondent appeared on July 9, 2009, he would have been informed that the termination hearing was adjourned to August 14, 2009.